

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**GENE WINDHAM, individually, and
as the personal representative of the
Estate of LILLIE MAE WINDHAM,
deceased,**

Plaintiff,

vs.

CASE NO. 2:08CV007

**HUDDLE HOUSE, INC., a foreign
corporation; HUDDLE HOUSE #389 &
482, a domestic corporation; GWYNNE
STRAUGHN, an individual; FRANCIS and
WYATT SASSER, individuals,**

Defendants.

**PLAINTIFF'S RESPONSE TO COURT'S ORDER
TO DEFENDANTS TO SHOW CAUSE**

COMES NOW the Plaintiff, in response to the Court's Order to the Defendants to Show Cause as to why the Defendants and their Counsel should not be held in civil contempt, and says as follows:

1. The Plaintiff did not mean to imply in anything he filed with this Court that the Defendants, or Counsel for the Defendants, had refused to cooperate in the preparation of the Rule 26(f) Report.
2. Counsel for the Plaintiff can confirm that Defense Counsel had a lengthy illness during the initial period of time in which the Report was due that kept him out of the office for a period of three weeks and that prevented the parties from conferring so as to prepare a Joint Report. Moreover, when the Report was due, Counsel for the Plaintiff filed a Motion to Remand. Counsel for the Plaintiff then called the Judge's law clerk, explained the situation with Defense

Counsel's health, and asked whether in light of the Motion to Remand, a Rule 26(f) Report was still due, or whether that Order would be stayed pending the resolution of the Motion to Remand. Counsel for the Plaintiff was informed some time later that the parties needed to submit a Joint Report as soon as possible.

3. Counsel conducted discussions regarding the content of the Report to be filed with the Court, including an anticipated trial date. The Court's initial Show Cause Order (Doc. 25 dated 2/14/08) was then entered which required the parties to Show Cause by February 19, 2008 as to why the Plaintiff's case should not be dismissed for the parties' failure to file the Rule 26(f) Report.

4. The next day, February 15, the Plaintiff attempted to discuss the final draft of the Report with Defense Counsel prior to the President's Day Weekend, but Defense Counsel was out of the office in a doctor's deposition. On Monday February 18, 2008, Defense Counsel was out of the office in mediation. Moreover, Counsel for the Plaintiff was scheduled to be out of the office, and was out of the office, all day on February 19. Not wanting anything to be left to chance, the Plaintiff filed the Report without the Defendants' Contentions on Monday the 18th, but e-mailed Defense Counsel prior to filing it, and gave him permission to sign Plaintiff's Counsel's name to a Joint Report once he added Defendants' contentions. See e-mail attached hereto as Exhibit "A." Counsel for the Defendants then submitted a Joint Report (Doc. 31) the next day, the Court's deadline of February 19 for responding to the Show Cause Order.

5. Consequently, the parties have now filed their Joint Rule 26(f) Report with the Court.

WHEREFORE, as the parties have now filed their Joint Report, the Plaintiff requests that this Court not sanction either the Defendant or Defense Counsel based on the above actions.

/s/Thomas B. Albritton
Thomas B. Albritton (ALB009)
Attorney for Plaintiff

OF COUNSEL:

ALBRITTONS, CLIFTON,
ALVERSON, MOODY & BOWDEN, P.C.
109 Opp Ave.
Andalusia, AL 36420
(334)-222-3177
(334)-222-2696

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing upon all counsel of record in this cause by electronic service if registered, and if not, by regular U.S. Mail, postage prepaid and addressed as follows, on this, the 20th day of February, 2008:

Mr. John M. Peek
416 South Three Notch Street
Andalusia, AL 36420

/s/Thomas B. Albritton
Of Counsel

EXHIBIT, A.

Tom Albritton

From: "John Peek" <JohnPeek@AlabamaLawyer.net>
To: <tba@albrittons.com>
Sent: Monday, February 18, 2008 6:05 PM
Subject: RE: windham

Thanks, Tom. I was in a mediation all day today. I will add my portion. Let me know if anything I provide is objectionable.

John

---- Original Message ----

From: tba@albrittons.com
To: johnpeek@alabamalawyer.net
Subject: windham
Date: Mon, 18 Feb 2008 14:21:45 -0600

>John: I will be gone all day tomorrow, so I'm filing the enclosed
>today. If you need to insert your contentions, or otherwise modify
>it, please do so and re-submit as a joint report. I trust you, so if
>you can't get up with me ahead of time, you have my permission to
>sign my name to it. Thanks.

>
>www.albrittons.com

>
>Thomas B. Albritton
>Albrittons, Clifton, Alverson, Moody & Bowden, P.C.
>P.O. Box 880
>109 Opp Ave.
>Andalusia, AL 36420
>Office: 334-222-3177
>Fax: 334-222-2696
>tba@albrittons.com

>
>CONFIDENTIALITY NOTICE: IT IS POSSIBLE THAT THIS MESSAGE IS PROTECTED
>BY THE ATTORNEY-CLIENT PRIVILEGE OR CONSISTS OF ATTORNEY WORK PRODUCT

>
>This message is intended for the individual or entity named above. If
>you are not the intended recipient, please do not read, copy, use or
>disclose this communication to others; also please notify the sender
>by replying to this message, and then delete it from your system.
>Thank you.

>
>DISCLAIMER: Unless specifically noted otherwise, the content of this
>message is not to be construed as legal advice, nor is it to be
>construed as establishing an attorney-client relationship if one does
>not otherwise exist. This message is to be construed as neither an
>offer, an acceptance, or an agreement to conduct future business by
>any electronic medium.

2/20/2008